

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

HTI/HYDRAULIC TECHNOLOGIES, LLC¹
Employer
And
Case No. 8-RC-16918
INTERNATIONAL ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, AFL-CIO, DISTRICT LODGE 54²
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.³

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time production and maintenance employees employed at the Employer's facility located at 850 South Street, Galion, Ohio, but excluding all office clerical employees, professional employees, guards and supervisors as defined by the Act.

There are approximately 31 employees in the appropriate unit.

HTI/Hydraulic Technologies, LLC (the Employer) is a Delaware corporation operating a facility located at 850 South Street, Galion, Ohio. The Employer is engaged in the business of producing, manufacturing and selling high pressure cylinders. The Employer commenced operations on September 12, 2007. The Galion facility is owned by a holding company named Ligon Industries, Inc. The Petitioner filed a petition seeking to represent employees of HTI/Hydraulic Technologies on September 13, 2007.⁴

ISSUE

The only issue presented at the hearing is whether the petitioned-for unit has contracted in size to an extent sufficient to warrant dismissal of the petition.

POSITION OF THE PARTIES

The Employer argues that there is definitive evidence of a contracting unit to show that the current work complement is not substantial and representative. The Petitioner argues to the contrary that while the size of the unit has been reduced, it is no longer contracting and the remaining employees must be given the opportunity to decide if they wish to be represented by the Petitioner.

DECISION SUMMARY

Based on the record as a whole, I find that the Employer's argument is without merit and I conclude that an election should be directed in this case.

FACTS AND ANALYSIS

³ The parties have filed briefs, which have been carefully considered. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction. The labor organization involved claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and 2(6) and (7) of the Act.

⁴ The hearing was not conducted until August 19, 2008 because the Petitioner had filed an unfair labor practice charge against the Employer, which blocked the petition until the ULP charge was resolved.

The Employer presented two witnesses at the hearing. Plant Manager Scott Thornsberry testified about the reduction in the workforce since October 2007 and through August 2008. The facility employed 75 unit employees on September 12, 2007. As of August 15, 2008, the facility employed 31 unit employees.⁵ General Manager William Anderson testified that the facility lost two primary customers, JLG and CNH, that accounted for approximately 80% of the facility's business. Anderson also testified that the facility is one of seven cylinder companies being offered for sale by Ligon Industries. He stated that the target date for prospective buyers to submit final offers is September 10, 2008 and the target closing date for the sale of the plant is October 31, 2008. The Employer, however, failed to provide any documents about the proposed sale of the facility or the identity of any potential buyers.

Although the Employer gradually reduced its workforce in 2008 to 31 employees, the record does not establish any definitive evidence that the Employer's workforce at the Galion facility is a contracting unit. Rather, the Employer's evidence is based on expectations of more layoffs, further decreases in monthly sales figures and the possibility that the facility will be sold. However, as of the date of the hearing, a reduction in force or the cessation of operations remained uncertain. Indeed, the Employer, in its brief, speaks in terms of the "uncertainties" it faces and does not offer any specific evidence about the expected size of the unit on any given future date.

The Board has held that a mere reduction in the number of unit employees in and of itself is not sufficient to warrant dismissal of the petition. **Wm. L. Hoge & Co., Inc., 103 NLRB 20 (1953)**. Further, mere speculation as to the uncertainty of future operations is not sufficient to warrant dismissal of the petition. **Canterbury of Puerto Rico, 225 NLRB 309 (1976)**. In **Gibson Electric, 226 NLRB 1063 (1976)**, the Board directed an election because the employer's initial anticipated completion date of the project was inaccurate. In that case, the Board noted that since work on the jobsite was still in progress at the time of its decision there was no impediment to an immediate election.

In **Douglas Motors Corp., 128 NLRB 307 (1960)**, the Board dismissed a representation petition where the employer established at the hearing that it was in the process of eliminating its production operations and converting its operation to a warehousing and distribution center, thereby reducing employees in the proposed unit from 40 to 10 and the number of job classifications from 16 to 1. In that case, the employer eliminated the production jobs in a unit of production and maintenance employees and the employer fundamentally changed its business operations.

Unlike the employer in **Douglas Motors**, the Employer here did not present any definitive evidence that its workforce would contract in the future. Instead, the Employer only presented evidence concerning the possibility of a reduction in force or the cessation of operations in the future. In support of its position, the Employer submitted Employer's Exhibit 1 to show the

⁵ Employer's Exhibit 1 shows that its workforce increased from 75 to 120 employees between September 12, 2007 and October 26, 2007. Between January 2, 2008 and June 13, 2008, the workforce fluctuated around 71 -73 employees. From June 16, 2008 through August 15, 2008, the workforce steadily declined from 66 to 31 employees.

reduction in force since September 2007 through August 2008. However, Exhibit 1 also showed that the workforce has fluctuated going from 75 employees to as high as 135 employees and then down to 60 and eventually 31. Employer witness General Manager William Anderson admitted in his testimony that the outlook for the employment level is “unclear at this time.” He further testified that his job is to create a business plan to turn the facility into a “viable business unit.” Mr. Anderson’s testimony shows that the current workforce may or may not further decrease in size. His testimony is also at odds with the Employer’s position that the facility will imminently be sold. Therefore, the record does not establish a definitive reduction in force, or reveal any evidence that establishes a “fundamental change in the nature of the Employer’s business operation” warranting a dismissal of the petition as in **Douglas Motors**.

In **MJM Studios, 336 NLRB 1255 (2001)**, the Board outlined the following policy regarding contracting units: “To warrant an immediate election where there is definite evidence of either an expanding or contracting unit, the present work complement must be substantial and representative of the ultimate complement to be employed in the near future, projected both as to the number of employees and the number and kind of classifications.” See also **Douglas Motors Corp., supra**. The Board held that an existing complement of employees is “substantial and representative” when approximately 30 percent of the eventual complement is employed in 50 percent of the anticipated job classifications. The Board will also examine whether the reduction is a result of a “fundamental change in the nature of the Employer’s business operations.” **MJM Studios, 336 NLRB at 1256**.

The Employer has not presented any definitive evidence that the number of employees will decrease in the future or to what extent the workforce might contract. Furthermore, there is no evidence that there has been a fundamental change in the nature of the Employer’s business operations. Thus, the Employer’s argument is based solely upon speculation about the future and fails to establish that the current complement of employees is not a substantial and representative complement of the eventual workforce.

Based upon the foregoing and the record as a whole, I find that the Employer’s request to dismiss the petition is without merit and I shall direct an election in this matter.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees of HTI/Hydraulic Technologies, LLC in the bargaining unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board’s Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or

reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the International Association of Machinists and Aerospace Workers, AFL-CIO District Lodge 54.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB vs. Wyman-Gordon Company**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days from the date of this decision. **North Macon Health Care Facility**, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. If a party wishes to file a request for review electronically, guidance for E-filing can be found on the National Labor Relations Board website at <http://www.nlr.gov/>. On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instruction explaining how to file the documents electronically will be displayed. This request must be received by the Board in Washington by September 12, 2008.

DATED at Cleveland, Ohio this 29th day of August, 2008.

/s/ [Frederick J. Calatrello]

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8